

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Brian Vacca, M.D.
(PTAN: K168126)
(NPI: 1417041523),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-17-763

Decision No. CR4932

Date: August 31, 2017

DECISION

I sustain the determination of the Medicare contractor, as affirmed upon reconsideration, to assign an effective Medicare participation date to Brian Vacca, M.D., of December 22, 2016, with authorization to file for reimbursement of claims for services beginning on November 22, 2016.

I. Background

Petitioner, a physician supplier, filed a hearing request in order to challenge his effective Medicare participation date, contending that it should be changed to July 10, 2016. The Centers for Medicare & Medicaid Services (CMS) filed a motion for summary judgment with a brief and eight proposed exhibits identified as CMS Exhibit (Ex.) 1-CMS Ex. 8. Petitioner opposed the motion and filed eight proposed exhibits identified as P. Ex. 1-P. Ex. 8.

It is unnecessary that I decide whether the criteria are met for summary judgment inasmuch as neither CMS nor Petitioner offered the testimony of a witness and no in-

person hearing is necessary. Acknowledgment and Prehearing Order dated June 13, 2017 ¶ 10. Neither party objected to the opposing party's exhibits, therefore I receive the parties' exhibits into the record. Therefore, the case is appropriate for a decision on the record.

II. Issue, Findings of Fact, and Conclusions of Law

A. Issue

The issue is whether a Medicare contractor properly assigned an effective Medicare participation date to Petitioner of December 22, 2016.

B. Findings of Fact and Conclusions of Law

There is no dispute that Petitioner filed an application with the contractor that the contractor received on July 1, 2016, in which Petitioner requested a change in contact person. CMS Ex. 1. Subsequently, on August 9, 2016, Petitioner filed an application to reassign his benefits. CMS Ex. 1 at 2. The evident purpose of this application was to inform the contractor and CMS that Petitioner was associating with a new group practice.

The July 1 application was not an application to participate in Medicare. CMS Ex. 1 at 2; CMS Ex. 3 at 3-4. That application was neither an application for reassignment of benefits nor an application to participate but, rather, simply a notification of a change in contact person. No right to file reimbursement claims accrued from that application.

By contrast, Petitioner's August 9, 2016 application was an application for reassignment of benefits and to participate in Medicare as part of a newly formed group practice. The contractor rejected Petitioner's August 9 application on the ground that the group listed by Petitioner had not yet received approval to participate in Medicare. CMS Ex. 1 at 2.

Petitioner then filed a new application on December 22, 2016, which the contractor subsequently accepted. CMS Ex 4; CMS Ex. 8. Petitioner now argues that the contractor should have accepted his July application as an application to participate and he demands that his effective participation date be changed so as to allow him to file reimbursement claims based on that application.

As I have discussed, Petitioner obtains no right to an earlier effective participation date than December 22, 2016, from his July application because that application was not an application to participate in Medicare but, rather, simply a notification of a change of contact person.

Nor is Petitioner entitled to an effective participation date based on his August application, the one that the contractor rejected. A party does not have a right to appeal

a rejected application to participate in the Medicare program. 42 C.F.R. § 424.525(d). Determinations that are appealable are listed at 42 C.F.R. § 498.3(b) and rejection of an application to participate is not one of them.

The effective date that the contractor assigned to Petitioner of December 22, 2016 (with billing authorization extended to claims generated as early as November 22, 2016), is as a matter of law, the *earliest* participation date that the contractor could have given Petitioner. Effective participation dates for suppliers such as Petitioner are governed by 42 C.F.R. § 424.520(d). That regulation states, among other things, that the earliest participation date that CMS (or its contractor) may assign to a supplier is the date when the supplier submits an application for participation that CMS finds acceptable. In this case, that application is the one that Petitioner filed on December 22, 2016.

Petitioner makes three arguments to support his contention that his effective participation date should be July 10, 2016. First, Petitioner contends that his July 2016 application should be considered as an application for reassignment of benefits and a Medicare enrollment application. That mischaracterizes the application and its purpose. As I have discussed, Petitioner submitted that application solely for the purpose of changing the name of his contact person. That application was not an application for reassignment of benefits nor was it an application to participate in Medicare as a member of a new group practice. Petitioner may not receive an effective participation date based on that application.

By contrast, Petitioner's application of August 9, 2016, was an application for a reassignment of benefits and participation as part of a newly formed group. As a second argument, Petitioner asserts processing errors with respect to that application. That is effectively a challenge of the contractor's rejection of the application. As I explain above, Petitioner has no right to make that challenge.

Third, Petitioner raises equitable arguments. He claims not to have received the contractor's notice of rejection of his August 9 application. He asserts that he was injured because he continued after August 9, 2016, to treat Medicare beneficiaries on the assumption that his August application would be approved and that he would receive an effective participation date based on that application.

I have no authority to address this argument. As a general rule, the principle of equitable estoppel does not apply to the federal government. More pertinently, it does not apply in cases involving CMS's determinations. *US Ultrasound*, DAB No. 2302 at 8 (2010) ("Neither the ALJ nor the Board is authorized to provide equitable relief by reimbursing or enrolling a supplier who does not meet statutory or regulatory requirements."); *Pepper Hill Nursing & Rehab. Ctr., LLC*, DAB No. 2395 at 11 (2011) (holding that the ALJ and Board were not authorized to provide equitable relief by reimbursing or enrolling

a supplier who does not meet statutory or regulatory requirements); *UpturnCare Co.*, DAB No. 2632 at 19 (2015) (Board may not overturn denial of provider enrollment in Medicare on equitable grounds).

_____/s/_____
Steven T. Kessel
Administrative Law Judge